## RULES OF THE DISTRICT COURT FOR THE



#### TWENTY-FIRST JUDICIAL DISTRICT STATE OF KANSAS

## JUDGES OF THE DISTRICT COURT TWENTY-FIRST JUDICIAL DISTRICT

PAUL E. MILLER Chief Judge

DAVID L. STUTZMAN District Judge

MERYL D. WILSON District Judge

WILLIAM M. MALCOLM District Magistrate Judge

SHEILA P. HOCHHAUSER District Magistrate Judge

Revised February 2008

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#### RULES ADOPTED

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The following rules of the Twenty-First Judicial District numbered 1 through 34, are hereby adopted and are effective June, 2005.

#### APPLICATION

These rules shall apply to all matters pending before any court in the District unless specifically superseded by statute or special rule governing proceedings in specialized court divisions.

## REPEAL OF FORMER RULES

All prior rules of the Twenty-First Judicial District, whether formally made or informally subscribed to, are hereby repealed effective June, 2005.

## MODIFICATION <sub>4</sub>

Any rules set forth herein, may be modified by the Presiding Judge in any action as such Judge shall deem necessary to meet emergencies or to avoid injustice or great hardship.

#### REFERENCES

All references to statutes and other rules are to the Kansas Statutes Annotated or to the Kansas Supreme Court Rules relating to District Courts, unless otherwise indicated.

## COURT DAYS

Court days pursuant to Supreme Court Rule 103 shall be designated as follows: Riley County –Monday of each week will be designated as a day of court. If a day of court is a legal holiday, any pending matters may be scheduled for the next regular day of court. Clay County – As reported to the Office of Judicial Administration and published annually in the Judicial Council Bulletin. If any such day is a legal holiday, any pending matters shall be heard the next day of court held in each Division.

#### ASSIGNMENT OF CASES

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Civil cases shall be assigned by the Clerk to a court division in the manner directed by the Chief Judge. Cases shall be permanently assigned to the Judges in a manner that will equalize the case load among the Judges, and shall prevent the predetermined selection of a desired court division by a litigant. The assignment shall be noted on the appearance docket, the file, and the trial docket of the assigned Division.

After such assignment all proceedings shall be held before the Judge of the assigned Division, except in the event of sickness, absence, or disqualification of such Judge. In such event a Judge of another Division may hear the case upon the request of a party. Any case so assigned shall for good cause be subject to reassignment, or transfer by the Chief Judge as the judicial work of the District may require.

When two or more of the cases abovementioned arise out of the same transaction, or involve the same party or parties, both, or all of such cases shall be assigned to the Division to which the case with the lower file number of such cases had been originally assigned. Any case dismissed and refiled shall be assigned to the Judge of the same Division to which it was previously assigned.

## COURT FILES AND RECORDS 8

No file or record of the Court shall be permitted to be outside of the physical possession and control of the Clerk of the District Court, or the Judge assigned to the case except on the signed receipt of an attorney or an abstractor whose place of business is within the appropriate case jurisdiction of Clay or Riley County. Any such file must be returned to the Court immediately upon request. No file or record may be taken outside of the County of the Clerk's office, except with the knowledge and consent of the Clerk or by Order of any Judge of the District. No file or record may be kept for a period longer than fifteen (15) days, and must be returned no later than three (3) days prior to any trial or hearing.

### COPIES OF MOTIONS

At the time of filing Motions, Briefs or other supporting memoranda, Counsel shall also provide a copy of these documents to the Judge handling the case in Chambers, following Supreme Court Rule 137.

## HEARING ON MOTIONS 10

Either before or at the time a motion is filed, and oral argument is requested, the Attorney filing the motion is required to obtain from the Scheduling Secretary or Court Reporter a time for hearing the motion. Motions upon which oral argument is requested shall be accompanied by a Notice of Hearing, and a showing of proper service being made on the opposing party or counsel. Motions which are not noticed for hearing at the time of filing will be deemed submitted, and oral argument will be deemed to have been waived, unless opposing counsel or the opposing party makes a request for oral argument pursuant to Supreme Court Rule 133.

In the event opposing counsel or the opposing party requests oral argument, they are required to obtain from the Scheduling Secretary or Court Reporter a time for hearing the motion, and to notify opposing counsel of said hearing time. If such request is made, but the motion is not noticed for hearing, such request will be denied and the motion deemed submitted for decision by the Court.

#### PRETRIAL CONFERENCE – GENERAL 11

All discovery shall be completed by the time of the pretrial conference. Though pretrial questionnaires may be helpful, they are no longer required, but may be used as counsel's option. Counsel shall attend a pretrial conference, and be prepared to comply in full with the procedure outlined in Supreme Court Rule 140. Additionally, counsel advancing any claim for relief shall be prepared to state, and discuss the elements of proof necessary to sustain the claim.

#### PRETRIAL CONFERENCE – DOMESTIC RELATIONS 12

Pretrial conferences shall be held in all contested divorce and separate maintenance actions. Discovery will be completed, and any home studies or evaluations concluded prior to the pretrial conference, unless otherwise ordered by the Judge. Upon the request of either party or upon the Court's own motion, the Court may hold a pretrial conference in any action seeking post-judgment relief in child support, alimony, or custody matters. Domestic Relations Affidavits and Child Support Worksheets as required by Child Support Guidelines shall be presented to the Court, and exchanged by the parties at the time of the pretrial conference. The parties shall be present unless excused by the Court.

#### DOMESTIC RELATIONS – EVALUATIONS 13

In all domestic relations litigation relating to child custody or visitation rights, the Court may order appropriate investigations and evaluations as allowed by statute, upon the joint application of the parties, the application of either party, or upon the Court's own motion.

- a) Any such application shall be filed within forty-five (45) days after the expiration of the time to file the last responsive pleading in the action.
- b) The conference will not be scheduled until after the Court has received the requested investigation or evaluation report and has disseminated it to the counsel and the parties entitled thereto suggest: unless otherwise ordered by the Court.
- c) Costs of the evaluation or investigation shall be paid as ordered by the Court.

## CHILD SUPPORT 14

No party directed to pay child support by Court Order shall be relieved of the obligation to pay child support during any visitation period unless such relief is expressly ordered by the Court.

## SUMMARY JUDGMENT MOTIONS 15

Motions for Summary Judgment will not be heard until discovery is complete, unless all issues to be considered can be determined as matters of law, and unless such issues will not be affected by later discovered facts.

#### HEARING-SCHEDULING 16

When a hearing date has been scheduled and a party or counsel requires a continuance or different hearing date, it shall be the responsibility of the requesting party to obtain a new setting from the Court's Scheduling Secretary or Court Reporter, and coordinate as well as confirm the new date with all opposing parties and/or counsel. If a matter has been noticed for hearing, and the parties by agreement are unable to select an alternate date, the setting will be changed only upon Order of the Court after proper application for continuance has been made.

## POVERTY AFFIDAVITS 17

In all civil cases filed with a poverty affidavit, inquiry will be made into the ability of the plaintiff to make the deposit to secure costs before the case is tried. If a plaintiff has sufficient property or income from which to pay the cost deposit, the case will not be tried until the cost deposit has been made. Diligent inquiry by counsel shall be made before a client proceeds by poverty affidavit.

## WITHDRAWAL IN CRIMINAL CASES 18

In all criminal cases where counsel has been retained, no Motion for Leave to Withdraw for Nonpayment of Fees will be heard following arraignment, unless other counsel has entered his or her appearance, or unless extraordinary circumstances are shown.

#### CONTINUANCE-PRELIMINARY HEARING 19

In cases in which the defendant is represented by counsel, requests for continuances of preliminary hearings shall be made no later than three (3) days prior to the scheduled date, unless good cause is shown for a later request.

## CRIMINAL-MOTIONS 20

Motions to Dismiss or to Suppress Evidence or Confessions shall be made in writing at least twenty (20) days prior to the time of trial, and Notice of Hearing thereof, shall be given in writing by serving a copy of such motion on the Prosecuting Attorney. Hearing on such motion shall be at least ten (10) days prior to trial.

## JURY INSTRUCTIONS 21

Pursuant to K.S.A. 60-251 written requests for instructions made by any party shall be presented to the Court and served upon each adverse party no later than seven (7) days prior to the opening of the trial and before the taking of evidence. But the Court may receive additional requests relating to questions arising during the trial at any time prior to the giving of final instructions. Pattern Jury Instructions are to be typed with the PIK number indicated on each instruction.

## PRISONERS-TRANSFER 22

When an incarcerated prisoner is to be brought to Court, either the Judge, his staff, or the County Attorney, shall request the Riley County Police Department, or the Clay County Sheriff's Office to bring the prisoner before the Court. The officer in charge of the prisoner custody is free to use any restraint necessary and reasonable under the circumstances to prevent escape, or harm to the officer, or others while transporting the prisoner to and from Court, provided:

- 1. Other than at trial, prisoners may be brought into the Courtroom bound or shackled at the discretion of the transporting officer.
- 2. Upon conviction of the prisoner, the officer in charge may shackle the prisoner in the Courtroom if deemed necessary by the officer, or by the Judge.
- The prisoner shall be taken to the hallway or holding cell at each recess, and his counsel shall have access to him at all times. No

- other persons shall have access to, or visit with a prisoner during said recess without express permission of the Judge.
- 4. At all times when the prisoner is returned to the jail from the Court, the officer in charge shall transport the prisoner forthwith to the jail, and not allow any person to confer with said prisoner en route without express permission of the Judge, except his counsel.
- 5. In all jury trials, the prisoner shall be allowed to wear suitable civilian clothes, or shall be brought into court in unmarked garments and not in distinctive jail attire.
- 6. In all jury trials, during the time the prisoner is in the Courtroom, at least one officer shall remain in the Courtroom continually. In all jury trials the officer shall sit in the spectator section unless the Judge Orders otherwise.

## PRETRIAL – CONDEMNATION 23

The following matters shall be considered and determined at pretrial conference of condemnation cases:

- 1) Date of taking;
- 2) Any amendments or changes in the taking since the original taking;
- 3) The number of acres of tract before the taking;
- 4) The number of acres taken;
- 5) The number of acres remaining after taking;
- 6) The nature of the taking, whether a fee simple interest or an easement;
- 7) Access rights taken;
- 8) Any unusual improvements, including

- fencing, which should be special elements of damage to be awarded;
- 9) The highest and best use of the property-taken;
- 10) Request for other admissions and stipulations;
- 11) Exhibits, plats or demonstrative evidence to be introduced;
- 12) A view of the premises;
- 13) Witnesses, appraisers; and,
- 14) Any special instructions needed.

#### SUPPORTING MEMORANDA FOR MOTIONS 24

All Motions, with the exceptions hereafter noted, must be accompanied by a memorandum suggesting the reasons and authorities supporting the same. The exceptions to the foregoing are:

- 1) Initial applications to the Court for additional time to plead which do not request extensions in excess of thirty (30) days will be ruled on instantly without supporting memoranda, and without awaiting responses from adverse parties,
- 2) Motions which show on their face facts, or authorities sufficient to support the relief requested do not require additional memoranda. (Motion and supporting memoranda may be combined, and where combined should be so labeled.)
- 3) Motions accompanied by an agreed Order will be ruled on without further supporting or responsive memoranda.
- 4) Preliminary Domestic Motions may be supported and opposed by affidavits in lieu of, or in addition to other memoranda.

5) Custody motions for temporary or permanent change of custody. Any motion may be dismissed by the Court for failure to comply with the requirements of this role.

## DIVORCE DECREE 25

All divorce decrees wherein title to real estate located in this Judicial District is involved, should have prominently displayed on the margin of the first page of the Journal Entry the notation in capital letters "Real Estate Involved" so that the Clerk of the District Court can have notice to comply with K.S.A. 58-2442 (a). Further, counsel should file with said original one copy of the Journal Entry for certification to the County Clerk, pursuant to such statute.

## BILL OF PARTICULARS 26

A Motion for a Bill of Particulars is unnecessary. A demand for a Bill of Particulars, pursuant to K.S.A. 60-1604 (d), if filed within the statutory time for answer, shall be complied with automatically and within twenty (20) days after demand

#### REFUND OF COSTS 27

Court costs and docket fees shall be refunded by the Clerk to the party or counsel of record advancing such monies after the party against whom costs and fees are assessed has paid the same.

#### INTERLOCUTORY ORDERS – DOMESTIC 28

In domestic cases, those matters which by statute may be heard ex parte will be heard upon verified application of either party. Barring extraordinary circumstances ex parte relief will be granted only after a hearing. Ex parte Child Support Orders, barring unusual compelling circumstances, will follow the Court's published guidelines then in effect.

Agreed Orders providing for temporary custody, support and/or Agreed Orders of Restraint will not be subject to the requirements of this rule; however, such an order must be approved in writing by counsel for the parties, or if no counsel, then by the parties themselves.

Clay County – Applications for interlocutory orders filed in Clay County shall initially be scheduled and heard by the District Magistrate Judge. In the absence, illness, or disqualification of the District Magistrate Judge, such applications may be heard by the District Judge to whom the case is assigned. Interlocutory orders may be made by the District Magistrate Judge notwithstanding that the District Judge may have made other orders relative to discovery, or arising out of a Pretrial Conference.

#### CRIMINAL CASE SCHEDULING APPEALS – JURY REQUESTS 29

Felony trial dates will be set at the time of felony arraignments. Counsel shall bring their calendars.

In Riley County, all counsel representing criminal misdemeanor defendants, who request a jury trial or who have appealed the conviction from Municipal Court or from the District Magistrate Judge, shall appear before the assigned District Judge within seven (7) days from the date of the appeal, or request for jury trial. It is the responsibility of defense counsel, county, and city attorneys to secure the date and time of appearance before the assigned Judge from the Clerk of the District Court. As appropriate, county and city attorneys shall appear. Counsel shall bring their calendars. A trial date will be set at that time.

In Clay County, all counsel representing criminal misdemeanor defendants who request a jury trial, or who have appealed a conviction from Municipal Court or from the District Magistrate Judge, shall appear on the next Court day that the Judge assigned to the case will be sitting. It is the responsibility of counsel, county, and city attorneys to secure the next court date and time of appearance from the Clerk of the District Court. As appropriate, county and city attorneys shall appear. Counsel shall bring their calendars. A trial date will be set at that time.

#### EXPEDITED JUDICIAL PROCESS: CHILD SUPPORT MATTERS 30

- 1. The District Magistrate Judge of this District is appointed to preside as the primary hearing officer in all matters referred by the Chief Judge under the provisions of Supreme Court Rule 172, and may conduct hearings in any County in the District.
- 2. In the absence of the District Magistrate Judge from the District, conflict of interest, work schedule, or other legitimate reasons the District Judges are appointed to preside as the hearing officer in all matters referred to them by the Chief Judge under the provisions of Supreme Court Rule 172, and may conduct hearings in any County in the District.
- 3. Powers of the District Magistrate Judge:
  - a) The District Magistrate Judge is empowered to establish, modify, and enforce orders of support pursuant to the Kansas Parentage Act, Ch. 114; L. 1985, K.S.A. 23-451 et seq., 39-718a, 39-755 or 60-1610, K.S.A. 1984 Supp. 38-1542,38-1543 or 38-1563 and Ch. 115, L. 1985.
  - b) The District Magistrate Judge is further empowered to enforce orders granting parental visitation rights to the parent's child. (The District Magistrate Judge is not empowered to address questions of child custody.)
- 4. Hearing Officer responsibilities:
  - Take testimony, and prepare written findings of fact and conclusions of law which shall constitute the summary record;
  - b) Evaluate evidence, and decide the most expeditious manner either to establish or to enforce Court Orders;
  - c) Accept voluntary acknowledgement of

- support liability and stipulated agreements setting the amount of support to be paid;
- d) Accept voluntary acknowledgement of parentage;
- e) Make Orders, including Default Orders.
- 5. If for any reason after commencing a hearing, a District Magistrate Judge determines that the case would be more appropriately heard by a District Judge, the hearing officer shall hear so much of the factual situation as necessary to support a decision either to issue a Temporary Child Support Order pendente lite (pending the outcome of the case), or not to issue such an Order. On the hearing officer's own Motion, the hearing officer shall then refer the case to the Chief Judge for further assignment.
- 6. Appeal of Order established by the District Magistrate Judge:

An obligor may appeal the judicial decision rendered by the District Magistrate Judge on Motion filed within ten (10) days after the Order was entered. The appeal will be heard by a District Judge. If a record was made the appeal will then be heard on the record, or if no record was kept, the appeal will be handled de novo.

- 7. Hearings on Income Withholding:
  If an obligor desires to contest an Order of Income Withholding, the hearing officer shall set a hearing to permit the obligor to asset any affirmative defenses authorized by 1985 Session Laws Chapter 115, Section 6, and within forty-five (45) days of notice of delinquency to the obligor, shall provide a decision on whether to withhold income.
- 8. Mandatory Language in Support Orders: Each Order for maintenance or support entered in this District after the effective date of this rule shall include the following provisions: a) IT IS FURTHER ORDERED that all

child support and maintenance payments shall be made payable to the order of the Kansas Payment Center, P.O. Box 758599, Topeka, Kansas 66675-8599. Each payment must include the Court Order Number (case number) proceeded by the two digit alpha character identifier for Riley (RL) or Clay (CL) County. Each party shall inform the Clerk of the District Court in writing of any change of name, residence, and employer (with business address) within seven (7) days after such change.

- b) IT IS FURTHER ORDERED that withholding of income to enforce the Order of Support shall take effect immediately under the laws of Kansas.
- 9. The Chief Judge of the District shall monitor all cases subject to the expedited judicial process in order to ensure that any action to establish, modify, or enforce court obligations is completed from the time of filing to the time of disposition within the following time frames:
  - a) 90% in 90 days.
  - b) 98% in 180 days.
  - c) 100% in 365 days.

# ARREST FOR VIOLATING CONDITION OF PROBATION, ASSIGNMENT TO COMMUNITY CORRECTIONS, SUSPENSION OF SENTENCE OR NONPRISON SANCTION

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1. Pursuant to, and in accordance with the provisions and authority as stated

in K.S.A. 22-3716 and amendments thereto. supervision officers of Riley County Court and Riley County Community Services hereby authorized Corrections are exercise the use of an arrest and detain affidavit, to facilitate the apprehension of those defendants who are determined to be in violation of court ordered conditions of probation, or misdemeanor parole, as a result of a conviction as an adult, which occurred in Riley County, State of Kansas, with such conditions having been ordered adhered to by the Magistrate and District Court Judges of the 21st Judicial District.

- Appearance bond for all adult probation or misdemeanor parole violations will be set at the equivalent of the bond as initially posted for previous appearance, or the last bond set in those cases where the defendant fails to make bond. Any changes must be approved by a District Judge.
- 3. All arrest and detain affidavits shall have the authorization and approval of the Chief Court Services Officer/Director of Community Corrections.

## COURTROOM SECURITY 32

Upon the request of any party to any court hearing, or upon the Court's own motion, the Court may require the Security Officer to provide security for the courtroom. Requests should be made through the Judge assigned to the case. The Judge will determine the level of security needed.

#### DOMESTIC RELATIONS -WORKSHOP FOR PARENTS

33

In all divorce or separate maintenance actions in which the parties have minor children, and in all other cases involving the custody or visitation of minor children, the parties shall attend workshop for parents. The workshop attended must be among those approved by the Court. Regardless of the type of case, the parties shall attend the workshop prior to the time set for pretrial conference, and file proof of attendance with the Court. This requirement also extends to the parties to post-divorce custody, or visitation motions when those parties have not previously attended an approved workshop. Each party shall bear the cost of the workshop subject to a later decision by the Court to assess the costs to one party or the other.

#### EXTENDED JURISDICTION JUVENILE PROSECUTION 34

Upon designation as an extended jurisdiction juvenile prosecution pursuant to K.S.A. 38-1636 (f) (2), proceedings shall be set for appearance and scheduling in due course within the adult criminal process. The respondent shall be entitled to the full protections of the Kansas Code of Criminal Procedure.

The assigned Judge shall schedule further hearings as necessary to facilitate trial by jury and timely prosecution of the pending charges. Upon conviction the case shall be transferred to the juvenile division for imposition of sentence in compliance with K.S.A. 38-1663 and K.S.A. 38-16, 126.